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JUDGE SPENCER ROANE.

“These are deeds which should not pass away,
And names that must not wither, though the earth
Forgets her empires with a just decay,
The enslavers and the enslaved, their death and birth.”

The last century, long before it cast its lengthening shadows to mark its close, and some thirteen years before it was convulsed in the throes of the mighty Revolution, witnessed the birth of Spencer Roane; and the early dawn of the present chronicled his death. The charm of Tacitus and Juvenal, writing of their day, the former saying, “of all kinds of merchandise, the faith of lawyers is the most venal,” and the latter printing his keen satire against the practice of the law of that day, is that they were eye-witnesses of passing history and the logic of contemporaneous events, and wrote from observation. The sketch of Spencer Roane can have no such charm, because there remain to-day no coevals of his from whom to collect a personal knowledge of the subject to embellish with pleasing incident and sparkling episode a sketch of his domestic, social and public life, and paint a portrait of his character, because it has died with them.

The reputation of judges, at best, is confined to the narrow limits which embrace the votaries of jurisprudence; and the most exquisite judgments which require the highest faculties of mind to master and expound, although they possess the wealth of imagery and illustration of Brougham or Burke, or are as pure and chaste as the lectures of Blackstone; and for power of thought and elegant demonstration and learning attain the highest reaches of the human mind, find no admiration beyond the ranks of lawyers, and live only in the dusty repositories of their oracles. Not so with the hero-warrior, orator, and statesman, who forever live in the history of their country, and whose fame is colored with the warm lights reflected back by the praise of many a distant age, and live, not only in story and song, but in school-



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boy's declamation. Yet time, the great umpire and final judge which tests the truth of everything, has been just to the merits and imperishable fame of Spencer Roane. He lived at a time when the warmest patriots hesitated in their confidence of their system of government, and the boldest and the most sanguine admirers of republics paused; when two parties formed—one for consolidated government, and the other for the autonomy of the States, jealous of all Federal influence. It was a time to stem the torrent of public prejudice, and with wisdom, moderation, and prudence almost surpassing human power, to lay deep the foundation of that government, the grandest and proudest the world ever saw. Before, however, the political passions of the hour had passed away the party conflicts and partisan resentments of the day were hushed and too recent not to leave scars; to use his own words in *Hunter v. Martin*, 4 Munf. 25, "before the heat of the contest had subsided and their passions had time to cool," the reproaches of party spirit turned into benedictions, beatitudes, and expressions of noble gratitude for the usefulness of his labors. And before he passed that solemn portal to which all human life is only the pathway, he witnessed that involuntary homage that human nature instinctively pays to its true noblemen—an homage to the majesty of the law; an homage of a free people to the institutions created by themselves and its great expounder in the halls of justice. Through the pure and tranquil atmosphere of the present the history of the past is viewed; so, in biography, the acts and principles of a public man under a government of the structure of ours, to whom has been committed the sacred duty of high public office, should be measured and reviewed by the inflexible standard of justice, looking to his motives and purposes as embodied in his acts and properly construed in the light of the circumstances of his life, and the nature, difficulty, and peril of his public duty. In the light of this, the acts and principles of Judge Roane constitute a claim on posterity as they did on his contemporaries for an inflexible political virtue universally admitted, and for the character of the most exalted and highest intellectual superiority. His juridical arguments and luminous judgments and his imperishable thoughts as embodied in the oracles of justice are recognized as the enduring monuments of his greatness, and have given an immortality to his name. No mistaken zeal of friendship for departed worth, nor to flatter living virtue, can induce any one to disturb the sentiment of a growing veneration.

Spencer Roane was born in Essex county, Va., on 4th of April, 1762, and died at the Warm Springs, in Bath county, Va., on 4th of

September, 1822. The span of his life of sixty years and five months is an epitome history of the age and civilization in which he lived, and he is the type of the chivalrous people from whom he sprang, coeval with the Revolution, and distinguished for their talents and patriotism. "The history of a people is, often, best preserved by their laws and civic institutions; and nothing adds more to the true glory of a nation than narratives of its wise and impartial administration of justice. The fame of the Areopagus survived the military glory of Athens; and while the battle of Marathon, the passage of the Hellespont, and the victory of Salamis were treated as fables at Rome, the memory of the Grecian laws still lived in the twelve tables of the Capital of the Universe."

Spencer Roane received in youth an excellent classical education under his father's roof, who was a Burgess for Essex from 1768 to the Revolution, and then a volunteer in the military service, and in his infancy became imbued with the very inspiration and genius of the heroic achievements and devotion to liberty of the Greek and Roman patriots. Our ever-glorious Revolution commenced whilst he was a boy, and he read with avidity the various resolutions and addresses promulgated to the world by the American Congress. The power of simplicity with which in these state papers the wrongs of America were described, the determined resolution which they displayed to defend the rights of the people and to resist the encroachments of Parliament and the Crown, the patriotism and magnanimity of sentiment which breathed throughout these admirable compositions, fired his young bosom with the spirit of republicanism, and fanned there the holy flame of liberty—that flame which continued to burn with undiminished lustre like the sacred fire on the vestal altar to the very day of his death. For in his last days he always declared that the happiest moment of his life was experienced by him when he mustered as a volunteer at the age of thirteen, armed with a carbine and tomahawk and clothed in a hunting-shirt, with the words "Liberty or Death" engraved in capitals over his left breast. *Life of Patrick Henry, by William Wirt Henry, Vol. II, p. 240.*

His destiny was the profession of law, and he devoted himself to his studies with the utmost assiduity, sensible that, as there was "no royal road to mathematics," so in law, labor was necessary to excellence, and no proficiency could be attained without constant and unremitting study. After his classical course, he went as a student to William and Mary College and attended the law lectures of the venerable George

Wythe, then a professor in that college. For the exalted character of Chancellor Wythe as a lawyer, as a virtuous and able man, and as a patriot, he entertained the sincerest respect, and always spoke in the highest terms of the benefits derived from his lectures, and with a veneration that was almost a religion on his lips. Before he was admitted to the bar he also studied law, and attended a law society, for a short time, in the city of Philadelphia. Whilst yet a student, he did not content himself with reading Blackstone's Commentaries and the Virginia laws, but he laid a *deep* and *solid* foundation by a close and unremitting *study* of the works of Littleton and Coke and the decisions of Hale and of Holt. The two former authors more especially he may be said to have appropriated to himself, and to have made them a part in warp and woof of his own strong and vigorous intellect. Coke was unquestionably his favorite author. He not only read over and again his Commentary on Littleton, but the whole of his reports were perfectly familiar to him. The Latin maxims of Coke, all of which were forcible, although many of them were quaint, were fastened on his memory, and he applied them not only in his written opinions, but in his familiar and friendly conversations, with great promptness and with a felicity peculiar to himself. Although this author's writings contain a great deal of dross, yet there was no mind more capable than his of extricating from the mass the rich ore and precious ingot concealed within. Upon this solid foundation, this base rock, he built the durable superstructure of law knowledge by which he was afterwards distinguished. After he was placed on the bench, which was at a very early period of his life, he studied more intensely than when at the bar, and extended the range of his reading to the decisions of the Hardwicks and the Mansfields and the other able judges and chancellors of the English bench.

In 1783, at the age of twenty-one, he was elected by his native county of Essex to the House of Delegates. He was chosen a member of the Executive Council, and took his seat on the board in June, 1785. Having served in that office two years, he resigned it, and was again taken by the hand by the people and elected to the Senate of Virginia by the district of Essex, King and Queen and King William. At this time he was so well known for his uncommon strength of mind, his inflexible integrity, his Whig principles, and, above all, for the moral courage with which he supported his political principles, that he was elected by the Legislature on the 19th November, 1789, to the bench of the General Court. At that time he was about twenty-seven

years of age. Then the District Court system prevailed, and the judges who sat in those courts were assigned by rotation to the several districts into which the State was divided. Judge Roane, in the course of the five years, sat in perhaps every district in the State. In this way he became known to all the lawyers in the Commonwealth. His judgments were so highly approved, his conduct on the bench was so dignified and pleasing, that he speedily became the favorite judge. This became apparent in a short time, for when the vacancy was created on the bench of the Court of Appeals by the resignation of Judge Tazewell, who went to the United States Senate, all eyes were turned on him. When that vacancy was to be filled by the Legislature, in the session of 1794, every judge of the General Court was put in nomination and Spencer Roane was chosen on the very first ballot. It came to him by a divine right as the fittest. This most honorable appointment, and the very flattering manner in which it had been made, was accepted by him with emotions of gratitude, and stimulated him to redouble his exertions to serve his beloved country.

On the 13th of April, 1795, he took his seat on that bench. He was then thirty-three years old, and, except Buller, there probably never was a man so young appointed to so high a judicial office in this or any other country. Edmund Pendleton presided in that court—a man whose splendid genius, eminent services to the republic and transcendent legal attainments, have been the theme of every tongue. Although there was a disparity in their ages of more than forty years, yet it is delightful to contemplate the entire confidence which immediately sprang up between the venerable sage and the youthful judge. They consulted together and with their respective associates with the utmost freedom and harmony; but although they often concurred in opinion, and Judge Roane entertained the highest respect for the opinions of his brethren, yet he never did in any instance yield his own convictions; and it may with truth be said that the ablest opinions which he ever delivered were those in which he differed from his venerable friend. As to the talents displayed by Judge Roane on the Court of Appeals, history and the records of the court will speak. I may well be silent. The venerable Daniel Call says: "From that time he read law assiduously, and became very well acquainted with some of the most popular of the modern reporters, particularly Burrows and Atkyns. This, together with the natural vigor of his understanding and his other literary attainments, soon rendered him one of the most distinguished members of the bench, second only, in public

estimation, to Mr. Pendleton, and, upon the death of that gentleman, the ablest judge of the court. His perceptions were distinct, his judgment strong, and his powers of reasoning great; but from the want of an earlier application to chancery studies he did not possess that happy turn for mixing law and equity together which was so conspicuous in Mr. Pendleton. His opinions, however, were generally sound and their authority almost uncontested. In all of them he inclined to the side of liberty, but had due regard to the rights of property and the just claims of creditors. He abhorred oppression and the arbitrary assumption of power by courts or individuals, and never thought the end justified illegal means to obtain it." He was conspicuous for the retentiveness of his memory, the analytical and discriminating powers of his judgment, the absolute clearness of everything within the range of his mental horizon and vision, the depth of his research on the most intricate and important subjects. The two volumes of Washington's Reports, the six volumes of Call's, the ten volumes published by Henning and Munford and by Munford alone, Gilmer's volume, and Peyton Randolph's, will stand as a monument of the unwearied assiduity with which he discharged his duties, and the great ability and inflexible integrity with which for more than twenty-seven years he promoted the best interests of the Commonwealth. Let those reports be diligently studied by the young lawyer, and so long as the law shall be regarded as a science so long will the opinions of Judge Roane be regarded with respect and admiration. No Virginian need be ashamed to compare his decisions with those of Westminster Hall, of the Supreme Court at Washington, or of the old conservative Commonwealths of the Federal Union. By lawyers of the highest eminence he has been placed alongside of Hale and Holt and Buller. But it was not only in expounding the doctrines of the common law and the principles of equity that the vigor of Judge Roane's mind was employed; his great delight was in examining and discussing questions of constitutional law. In forming his opinions on constitutional questions, the liberty of the people was his guide and polar star. That love of liberty and of equality of rights which he had imbibed during the revolutionary struggle became the master passion of his soul. The several articles of the Bill of Rights he considered as incontrovertible maxims; the Declaration of Independence as the inspiration of truth. The Act establishing Religious Freedom, that "*sublime*" Act, as he frequently termed it, penned by Jefferson and introduced into the legislature by Madison, he considered as fundamental in its character, and the *magna charta* of our rights. With

his strong convictions, and still stronger feelings on these subjects, it is not wonderful that he should have joined most heartily and strenuously the republicans of 1798-99 in denouncing the Alien and Sedition Acts as encroachments on the rights of the States, as violations of the rights of the people and abridgements of their freedom. Before the adoption of the Federal Constitution he united in opinion with Henry and Mason, Grayson and Monroe in opposing it, not because the Articles of Confederation were sufficient for the Union, nor from any unwillingness to increase the powers of the Federal Government; on the contrary, he was of opinion that the Union was "too loosely banded together," and wished to see it vested with the power of raising an adequate revenue for all purposes of defence, without depending for support on requisitions from the States. He did think, however, that some powers were given by the Constitution which should have been withheld, and he did fear that the important powers reserved to the States and to the people were not reserved with sufficient explicitness. This last fear was dissipated by the adoption of the Amendments; and the Constitution having been ratified, no man was a warmer friend to it, nor was more anxious to support it, according to its genuine spirit. In a very short time the construction of that Constitution gave rise to parties. Judge Roane, true to the principles which had ever actuated him, gave to the Republican party the entire support of his vigorous mind. He maintained that the Federal Government was *limited* in its powers; that it possessed only those which were *expressly granted* by the very terms of the compact, or were *fairly incidental* to them. He did believe that in some instances Congress itself had exceeded those powers, and that the Supreme Court had given to the Constitution a latitude of construction in derogation of the rights of the people. He maintained these principles in legal opinions, in essays and in conversation with a steadfastness, a constancy and an energy which added to the stock of his well earned popularity in his native State. His opinions on these subjects were uniform and consistent. They were also entirely disinterested. The people of Virginia would have conferred on him any office, however exalted, in their power to bestow, under the firm belief that his talents were equal to any occasion; that he possessed a firmness not to be shaken, and a rectitude beyond impeachment.

An incident here will illustrate these traits and the patriotism of Spencer Roane, which is ever characteristic of the proud and noble people from whom he sprung, and which ever crop out under like conditions in a remarkable (his native) county. In the spring of 1783

(when he was a delegate from Essex) several of the most respectable of his constituents from Essex county tarred and feathered one James Williamson. He had been a merchant in Tappahannock; had gone to the British, and endeavored to bring up tenders to burn the town during the war, and after peace had returned to Tappahannock, where he was countenanced by some of the inhabitants. This gave such umbrage that he was pursued, caught, and tarred and feathered by the principal men of Essex. They were prosecuted for this misdemeanor in the General Court. While the prosecution was still pending, these citizens sent a petition to Spencer Roane, in the spring of 1784, praying the Assembly to arrest the prosecution. He presented the petition, and got a law of indemnity in some progress, taking care to state, as the fact was, that the act was committed before the definitive treaty was signed, which was some alleviation of their conduct. Mr. Henry took him out one day, and said, that he admired the Whig spirit which actuated him, but that the intervention of the legislature could not be justified. Spencer Roane replied that the transaction was irregular, but that the provocation was great and the act was done, in some sense, *flagrante bello*. Mr. Henry persisted. Spencer Roane defied. Mr. Henry desisted, and the Act of indemnity passed. Letter to William Wirt, 2 vol. p. 244, Henry's Life of Patrick Henry.

It is said that Mr. Jefferson, to whose school he belonged and of whom he was a close and warm personal and political friend, and whose party is generally known as the Jeffersonian Republican, wished him, at the expiration of Mr. Monroe's term, to be run as Vice-President with Mr. Crawford for President, with a view that he might succeed the latter as President; and had he lived and Mr. Crawford's health continued, it is probable Mr. Jefferson's wish would have been accomplished.

And contemporaneous history also tells us that after the election of Mr. Jefferson to the Presidency, John Jay being for the second time the Chief Justice of the Supreme Court, which office he proposed to resign, it became known that Mr. Jefferson would nominate Judge Roane to fill the vacancy. This did not suit the Federalists, and about the last of January preceding the 4th of March, when John Adams' term would expire, Mr. Jay was induced to resign, so that the then President might have power to nominate the successor, and that Mr. Adams did nominate John Marshall, who was confirmed, and thus Judge Roane missed the place.

Like Payne, the author of "Home, Sweet Home," who is said not

to have had a home, I would be drawing the strokes of a portrait without an original were I not to say that even in his judicial pursuits Judge Roane did not suppress his turn for politics, and, although he never neglected the business of the court, he was much engaged in the political controversies of the day, and frequently wrote in the newspapers concerning them, and exercised a potential influence in politics while on the bench. He established the *Richmond Enquirer*, and Thomas Ritchie, termed the Napoleon of the Press, and whose motto was "Liberty, the Union and the Constitution," embarked in that field of journalism under his aid and auspices, and when that journal fulminated and sent forth its thunders over the American Union on the burning questions of the day, involving the destinies of the people, and not only lead political thought, but materialized political action with more the voice of an oracle than the *Tribune* of Horace Greely and the *Enquirer* of Murat Halstead of their day, it is said that Judge Roane was behind the throne. In 1819 Judge Roane attacked, over the name of "Hampden," in the *Enquirer*, a decision of Judge Marshall's, which asserted the controlling power of Federal over State courts in a suit by a foreigner against a citizen of Virginia (Randall's Life of Jefferson, Vol. III, p. 453). And in the same paper, in 1821, he wrote on the Missouri question, over the name of "Algernon Sydney." Be this as it may, it has been the crowning and traditional glory of Virginia that her judiciary while wearing the ermine, the emblem of its purity, has drawn around it its robes unsmeared from the mire of the political arena, and it is the creation of the wisdom and purity of a great Virginian, John Marshall, the foremost Chief Justice who ever sat on the Bench of the Supreme Court of the United States, "that a corrupt and partisan judiciary is the greatest curse that High Heaven ever inflicted upon a sinning people;" yet no reader of the history of the early days of the Republic, when its patriots, bound together by new bonds forged in the fires of the Revolution, and cemented by the blood of heroes, vied with each other for its eternal perpetuation, can doubt the exalted patriotism, inflexible integrity, and devotion to country, of Spencer Roane. Let the student of political wisdom and knowledge and the philosophy of jurisprudence read the opinion of Judge Roane in *Hunter v. Martin*, 4 Munf. 25, refusing as a State court obedience to the mandate of the Supreme Court of the United States because not authorized by the 25th section of the judiciary act, with its strength and wealth of intellect, its self-reliance, and vigorous, invincible, and resolute grasp, as "a recurrence to fundamental

principles," and he can drink in with relish the refreshing draughts from its perennial fountains those eternal canons of interpretation which have made him a foremost expounder of the Constitution, its limitations and its authorities, its powers and all the guards upon their exercise—the perpetual divorce of the powers in the independent exercise of their respective spheres of the co-ordinate branches of the government, "a principle deemed vitally important to free government by all enlightened writers, 'The Federalist' not excepted, that the power of making and expounding a law, or constitution, should not be blended in the same hands, but the mission of a fearless judiciary, the bulwark of the liberties of the people, was uninfluenced and unfettered, as it should be, by the fear of 'political consequences in rendering its judgments.'"

But, if it is said, that Spencer Roane cultivated political tastes, we read from history that the Chancellors of England were not exempt from the charge, and the same was said of Jay and Rutledge, Ellsworth and Marshall, the great Chief Justices of the Supreme Court, as being partisan in the construction of the Federal Constitution in the earlier days of the Republic. The Federal judiciary was ever the object of criticism, even by the Sage of Monticello, as will appear from his letters to Mr. Giles in 1801 and Thomas Ritchie in 1820, and Mr. Jefferson actually charged that Chief Justice Marshall should not preside in the trial of Aaron Burr, because of his prejudice to his administration. But as grateful memories silently linger around their recorded opinions, we feel that they are none the less pure and impartial judges.

The love of fame has been styled the "infirmity of noble minds," and it cannot be said that he violates a law of nature who cherishes the hope of present applause, or of future renown. If it was thought that Judge Roane was thus throwing himself into the vortex of political ambition, it is an established fact that when his name was enrolled among the names for the Presidency among the galaxy of distinguished candidates, and he discovered it in the *Petersburg Republican*, he being at the time an invalid on his couch in Petersburg, with the greatest energy of manner he disavowed such a wish, and emphasized that the business of administering justice in the sphere of usefulness to his country was his highest ambition.

He was twice appointed one of the Revisors of the laws of his State, and several times one of the College of Electors of President and Vice-President of the United States, and as such gave the greatest satisfac-

tion. He was also one of the commissioners for locating the University of Virginia.

Judge Roane, in his private life, had as many virtues as any man. He had his faults, and what human being is free from them? They were exclusively such as sprung from a warm temper and from the energy of his character. He was benevolent, social, and a friend to general order. Being from feeling and education a republican, he hated aristocracy and family pride, as well in those of his own party as in those of the opposite side.

He was twice married, and a kinder and more affectionate husband, in both instances, never lived. He married the first time Anne Henry, the daughter of Patrick Henry, Governor of Virginia, on September 7, 1786, Philip Aylett marrying his other daughter, Elizabeth, the following month. Upon the marriage of his daughter to Spencer Roane, Mr. Henry wrote to her "a letter which may well challenge comparison with any production in language," says the gifted author, William Wirt Henry, in his Life of Patrick Henry. "You are allied to a man of honor, of talents, and of an open, generous disposition," says Patrick Henry. 3 Vol. 305. It is simply an exquisite letter. At the death of his wife, May 24, 1799, Judge Roane wrote to Mr. Henry: "The cup of my misery, my dear sir, is now full by the loss of my most amiable, virtuous, and affectionate consort, your dutiful and affectionate daughter." Id. p. 624. His second wife was Miss Hoskins. He was an affectionate parent. His son, William H. Roane, was an eminent lawyer, twice a member of the Executive Council of the State, member of Legislature from Henrico, member of Congress from Richmond District, Presidential Elector and United States Senator from 1837 to 1841. He died in Henrico May 11, 1845.

Judge Roane's friendship was constant, generous, sincere, and ardent. His hospitality was of the old Virginia character, plain and unostentatious. His doors were always open to his friends, and every visitor felt himself at home. He was of an extremely social turn, and his disposition gay and cheerful. He was, like Chancellor Kent, full of sparkling and charming conversation, which was at all times original, forcible, entertaining and instructive. Amidst all his devotion to the duties of his profession, he never lost his relish for the beauties of literature. He had a taste for *belles lettres*, especially Rollin, and, although his reading was chiefly confined to law, history and politics, yet it was miscellaneous. He was particularly fond of historical works and the good old school of English classics. He always read the dramas of

the immortal Shakespeare with delight, quotations from which frequently embellished his writings and enriched his conversation. His style was nervous, often eloquent, but sometimes careless. In his recorded opinions is the highest style of writing, plain and simple, yet his master mind made each word a necessary link in the chain of logic that draws and binds the judgment of the reader to the conclusion of the writer. His literary productions were flowing and classic. See letter to William Wirt, Vol. II, p. 241, William Wirt Henry's Life of Patrick Henry.

In the *Green Bag*, July, 1893, a cultivated writer represents Judge Roane as jealous of his associates on the bench, and very disagreeable to all of them, and a tradition still lingers that by such conduct he drove Judge St. George Tucker off the bench. Be that as it may, the venerable Daniel Call and other contemporaneous historians and writers represent his love, respect and deference for Edmund Pendleton, the President of the Court, as simply beautiful, and these writers, together with Mr. Jefferson, Mr. Henry, and Mr. Ritchie, emphasize his friendships as ardent and sincere. That the ardent and often nervous nature of Judge Roane did sometimes disturb and ruffle what Milton terms "this sweet *intercourse* of looks and smiles" of Judge Tucker, of charming amiability and personality, the writer cannot doubt. That their thoughts were always concentric and convergent, whether in or out of the conference room, on all questions under review in the domain of jurisprudence, no one believes who knows the characters of these great masters of intense conviction and independent thought.

We have one incident that comes to us, that when he was in delicate health he was once accosted by a parvenu in what he thought an unsympathetic way: "Judge, you are looking very badly to-day," when he replied, with all the irony of Randolph, "Well, sir, that is what I have often thought of you, but I was too polite to tell you so." In the great Dred Scott case, which presented the question of the capacity of a person of African descent to be a citizen, the great and venerable Chief Justice Taney delivered the opinion of the court, and Justice Curtis dissented. It was said that on account of the irritation, excitement, passion, and impatience in that august and majestic tribunal, the Supreme Court of the United States, the "charmed sphere," and it is said, "where judges sit in God's seat," shown to the dissenting opinion, Judge Curtis resigned his seat; yet this report was never refuted until Judge Curtis paid his graceful tribute to the illustrious Chief Justice, since his death. And others than cynics and skeptical

readers of history might conclude (to the discredit of the highest and most august court on earth), from the text of the opinion of the court, and the dissenting opinions in the celebrated "Income Tax" cases of recent date, that their aims to appear honorable, and all the arts employed to attain to be manly arts, should be freer from irritation, passion, excitement, caval, combination or exorbitant desire to carry cases, and have more of courtesy, self-control, and mutual deference.

We know, however, that Judge Tucker and Judge Roane did agree in *Turpin v. Lockett*, 6 Call. 113, when there was a divided court, and they sustained the constitutionality of the great Act of 1802, by which the glebes of the Episcopal Church were ordered to be applied to the poor of the parish where they were situated, and in other cases.

We also read that, from the fact of complaint that there was accumulated business undisposed of by the court, it was declared by an Act of Assembly (passed the 9th of January, 1811), "that the Court of Appeals shall hereafter consist of five judges; any three of said judges shall constitute a court; the said court shall commence its sessions on the 1st day of March next, and its sittings shall be *permanent* if the business of the court require it; *provided always*, that the court may, in their discretion, adjourn for short periods; *but it shall be their duty to sit at least two hundred and fifty days in the year, unless they sooner despatch the business of the court.*" Judge Tucker, with a most vigorous and powerful protest over his hand, calling it an oppressive and unconstitutional act, sent, on April 2, 1811, his resignation of his seat on the Court of Appeals to James Monroe, Governor of Virginia, which was accepted. 2 Munf. p. xvii. This historical paper (reference to which was furnished the writer by the venerable and accomplished Judge Crump, of Richmond), in burning words showing the self-sacrifice and patriotism of Judge Tucker in the act of resignation, and specifically giving his reasons, removes the ground for and is a refutation of any tradition; which paper has been accepted by posterity and the descendants of these two great jurists as an assurance that, if there were ever formal and conventional relations at any time, they never culminated into official separation by resignation; and the posterity and descendants of Judge Roane to-day can point with pride to no nobler, abler and more faithful eulogist than the peerless John Randolph Tucker, the grandson of Judge Tucker, and can commit the fame of Judge Roane to no more pious hands as a sacred task than his:

"Time fails me to tell of the judges who were trained in this school

of natural law for the science of jurisprudence. Pendleton and Wythe, Jefferson and Madison, John Taylor and Roane, and a host of others, are a galaxy of great statesmen who were also thoughtful jurists, though not case lawyers; taught by a profound knowledge of human nature, and a large and varied experience in human affairs to rear the temple of a sound jurisprudence upon the deep foundation of natural justice, and upon the law of God." John Randolph Tucker, House of Representatives, January 22, 1879.

The writer of this sketch could not more gracefully embellish this sketch than by quoting once more from Mr. Tucker. Orator, debater, and ripe scholar, he charms with graceful and sparkling speech and eloquence; brilliant and profound, his writings flash as if studded with diamonds. A leader of brilliant thought in American jurisprudence, whether in or out of the American Congress, the highest authority on constitutional and parliamentary law, sound in diplomacy, a Professor of Law profound and philosophic, the knightly John Randolph Tucker, from original power and inheritance has the right to speak for the Bench and Bar of Virginia: "The old civilized life in Virginia was fruitful in leaders of thought in jurisprudence, as well as statesmanship and war. The fashion of some modern writers is to speak of that life as a lower type of civilization than elsewhere. It is a calumny. 'Judge the tree by its fruits.' Let any other civilization match the statesman-hero in the unapproachable character of Washington, or excel the political philosophy and wisdom of Mason, Jefferson, Madison, Henry, and Randolph, or the matchless and massive model of judicial excellence of John Marshall!"

"In that olden time her Court of Appeals was presided over by jurists illustrious for learning, intellect and integrity—Pendleton, Lyons, Fleming, Brooke, Tucker, Cabell, Allen, Moncure, with whom, though never President, I must mention, as a presiding genius in its laurels, the name of Spencer Roane. In her chancery and circuit courts we find Wythe and Carr, Lomax and Leigh, White and Daniel, Upshur, Scott and Brockenbrough, Parker and Smith, and many no less worthy. In the ranks of her bar I delight to recall the shades of the mighty dead. On that noble roll are the names of Washington and Call, Wickham and Tazewell, Wirt and Walter Jones, the great triumvirate, Johnson, Leigh and Stanard, John Robertson and Cooke, Patton, Robinson, Green and Joynes, the Barbours, the Brockenbroughs, the Baldwins, the Daniels, the Gilmers, the Masons, the Southalls, the Minors, the Taylors, Morris and Droomgoole, Marshall, Conrad and Williams,

Peyton, Michie and Stuart, Claiborne and Gordon, Scott and Preston, Mosby and Whittle, and a host of others, living and dead, whose genius and learning Virginia cherishes as the choicest jewels in her crown! Let us enroll these names on immortal tablets to arouse our ambitious efforts and lift our hopeful aspirations to make the latter-day glory of our noble jurisprudence rival, if it cannot excel, the splendor of that ancient Temple of whose memories we are all inheritors." At Virginia State Bar Association, Hygeia Hotel, July 12th, 1892.

Thomas Ritchie, an intimate friend of Judge Roane, and native of Essex, whose portraits now adorn the court-room at Tappahannock, in announcing his death through the *Richmond Enquirer*, said, among other things: "He retained the vigor of his great mind to the last. Sensible of his fate, he met death with that invincible fortitude which he had evinced on every other occasion. The day before his death he spoke with great animation on public concerns, and, whilst the newspapers were read to him, made several remarks, with his usual *naïveté* and force of expressson. In truth, his patriotism seemed never to sleep or slumber whilst he lived. His remains were interred on Thursday afternoon. The court, the bar and the visitors at the Springs attended him to the grave. Judge Roane was born on the 4th of April, 1762, and had lived sixty years and five months without fear and without reproach. His loss is scarcely to be repaired. Virginia has lost in him one of her most useful sons, the United States one of her most high-minded citizens. Early embarking in the public service, he manifested those principles of liberty, that unshaken devotion to human rights, which has distinguished him in every situation. He was a member of the legislative body. He was elected into the Executive Council. He became the intimate friend, the affectionate son-in-law, of the distinguished Patrick Henry. He was elected to the bench of the General Court, and finally into the Court of Appeals, the highest judicial tribunal of the State of Virginia. Why attempt a panegyric over his services in this department? He was one of its noblest pillars. No sophistry could bewilder his judgment; no eloquence could shake the poise of justice. He dared to think for himself; and a man, the resources of whose mind were so fruitful and original; whose principles were so deeply imbued in the fountain of truth, scarcely failed to cast a flood of light upon every case which he studied. He not only dared to think for himself, but he dared to do what he thought was right.

"Though duly sensible of the good opinion of his countrymen, he

never sacrificed to the phantom of the day the eternal principles of truth and honor.

“There was an energy about him which bore him fearlessly and victoriously along. The judicature of this land owes him much—the Constitution of his country, if possible, owes him more. He was a republican of '98—'99, the friend of Jefferson and Madison and Monroe.

“For thirty-four years in the judiciary, and for a large portion of that time one of its most efficient members, his loss must be deeply felt. As the friend of liberty, the loss of his services will be severely deplored. As a man, he will be lamented; as a friend, Spencer Roane will be deeply mourned. But who shall paint the bereavement of his family?”

He sleeps in the grand old mountains of Virginia, amidst which his parting spirit took its flight to the God who gave it, nature's own Westminster Abbey, in the bosom of the State and people he loved so well, a fitting monument of his granite mind, a majestic mausoleum of a majestic man. Like the grave of Edmund Pendleton, the great Mansfield of Virginia, there is nothing to mark the spot, much less monumental marble, nor lofty cenotaph to add to his glory; and although a grateful Republic and people may never demand that the dust of these great men shall be buried near the Capitol with the ashes of her consecrated and immortal dead, yet as long as we believe, as Lord Erskine said, “that an independent judiciary is another fold in the shield of the freedom of the people,” and, as Lord Coke said, “that law is the perfection of reason;” as long as we reverence the Constitution as the supreme law, and the chart of human liberty, the *tabula in naufragio*; as long as we unite fervently in that sublimest apostrophe of good old Richard Hooker, of England, in the time of Queen Elizabeth, the richest gem in language: “Of Law there can be no less acknowledged than that her seat is the bosom of God; her voice the harmony of the world. All things in heaven and earth do her homage; the very least as feeling her care, and the greatest as not exempted from her power. Both angels and men, and creatures of what condition soever, though each in different sort and manner, yet all with uniform consent, admiring her as the mother of their peace and joy;” as long as we acknowledge that “Law is the emanation from Heaven and the gift of God,” Virginia, the pathway of whose splendid civilization, trodden with the civic crown of law on her brow, and the torch of Liberty in her unmailed hand, has been

illumined by the genius, the patriotism and learning of her sons, like Cornelia, the mother of the Gracchi, when she counts her jewels, will point to Spencer Roane as one of the choicest in her crown, and his name as one of the brightest constellations in her judicial firmament.

"His spirit wraps the dusky mountain,
His memory sparkles o'er the fountain,
The meanest rill, the mightiest river,
Rolls mingling with his fame forever."

T. R. B. WRIGHT.

Tappahannock, Va.

MECHANICS' LIENS.

ORIGIN AND DEVELOPMENT OF THE LIEN.

The Mechanics' Lien is purely a creation of Statute; it had no existence at common law, and, independently of statute, is unknown in equity. Common law liens were inseparably connected with the possession of the subject of the lien, and were lost when the possession of the specific article on which the lien was claimed passed from the lien creditor. The common law lien recognized the right of the creditor to retain the possession of the article, created or enhanced in value by his labor, till the compensation due for his labor thereon was paid. As his labor, under contract with the owner of the chattel, had gone into the chattel, and of course could not be separated therefrom, the workman was permitted to retain possession of the finished article till he was paid for the labor that had become inseparably a part of it.

A development of this common law lien, by which the workman was permitted to retain possession of the chattel, which had been increased in value by his labor and his material, has produced statutes providing for mechanics' liens in forty-five of our States and Territories and in the District of Columbia. If the workman was permitted to follow his labor and his material into the chattel that they had created, or had given value to, why should not the workman and the material man be permitted to follow their labor and their supplies into the buildings and structures, which owed their value to the industry and the material that had created the buildings and structures? If the workman might retain possession of the chattel, and so give notice